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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,136	11/12/2003	Gary Ames Peck	CA-282	6221
7590 WILLIAM J. CROSETTA, JR. CROSSETTA & ASSOCIATES 4135 DAVID COURT WILLIAMSVILLE, NY 14221			EXAMINER CASTELLANO, STEPHEN J	
		ART UNIT 3781	PAPER NUMBER	
			MAIL DATE 02/05/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/706,136	PECK, GARY AMES	

  

<b>Examiner</b>	<b>Art Unit</b>	
/Stephen J. Castellano/	3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 26 December 2007.
- 2a) This action is **FINAL**.                                   2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1,4-11 and 13-38 is/are pending in the application.
- 4a) Of the above claim(s) 10 and 33-38 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1, 4-9, 11 and 13-32 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

Claims 2, 3 and 12 have been canceled. Claims 1, 4-11 and 13-38 are pending.

Claims 10 and 33-38 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 14, 2006.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 4-9, 11 and 13-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is indefinite because the claim discusses “a spill retainer wall” (introduced in line 4) that surrounds the paint can securing means as a separate part from “a retainer wall” (introduced in line 6) that extends upwardly from about the perimeter of the container. However, there is only one retainer wall 16 as discussed in the specification. Claim 1 is indefinite because the claim language is confusing as to the proper number of retainer walls. Claim 1 is interpreted to have only one retainer wall as read in light of the specification and the disclosure of one retainer wall 16.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-9, 13 and 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams et al. (4852759)(Williams) in view of Morrison (2003/0230244).

Williams discloses a painter's portable tool kit comprising the single component of a topple resistant receptacle. Williams receptacle comprises a flat bottom surface, an inner surface comprising a paint can securing means surrounded by a spill retainer wall, the receptacle comprising a shallow pan shaped container having a flat bottom surface with a retainer wall extending upwardly about a perimeter thereof to form a liquid holding well. Williams discloses the invention except for a double walled retainer wall. Morrison teaches a double walled retainer wall. It would have been obvious to add the double wall and lip 120 of Morrison to reinforce the outer perimeter of the receptacle and add strength and stability to the receptacle. The outer wall 106 of Morrison tapers outwardly at the bottom and extends downwardly below the bottom surface. The inner and outer walls of the retainer wall 106 of Morrison are connected along top margins thereof by a top wall of the retainer wall. The top wall (or means connecting the top margins) of Morrison includes a recess 122 for attaching an extending guide member (lip 120).

Re claim 9, Williams discloses the invention except for protruding ridge of the metal paint container. The Official notice taken in the Office action mailed June 8, 2006 that metal paint containers and bottom sidewall outwardly protruding ridges for paint containers are well known has not been challenged. The Official notice was treated as a prior art admission in the final Office action mailed May 10, 2007. It would have been obvious to modify the paint container to be metal and to have a bottom sidewall outwardly protruding ridge to provide a container that secures in a stable manner with the topple resistant receptacle of the kit.

Re claim 13, Williams discloses the invention except for the size. It would have been obvious to modify the size of the topple resistant receptacle to be at least equal to two times the surface area of the bottom of a gallon container as a matter of design choice in selecting a size large enough to retain a significant amount of the volume of a full gallon paint can if such should spill.

Re claims 27-31, Williams discloses the invention except for the adapter plate and the ladder hook. The Official notice taken in the Office action mailed June 8, 2006 that adapter plates and ladder hooks are well known has not been challenged. The Official notice was treated as a prior art admission in the final Office action mailed May 10, 2007. It would have been obvious to add the adapter plate to provide a means to convert the circular attachment to a rectangular attachment. It would have been obvious to add the ladder hook to suspend the receptacle from a ladder.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Williams in view of Morrison as applied to claim 1 above, and further in view of Demitry.

Williams discloses the invention except for the oblong nature of the receptacle. Demitry teaches an oblong receptacle with rounded end and flat end. It would have been obvious to add an area for a brush support which is rectangular and to make the rectangular receptacle circular such that one end is rounded while the brush support is located at a flat end in order to provide a space to rest a brush.

Claims 14-16 and 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams in view of Morrison as applied to claim 1 above, and further in view of Pool.

Williams discloses a painter's portable tool kit comprising the single component of a topple resistant receptacle. Williams fails to disclose the slot shield portion of the kit. Pool discloses a slot shield. It would have been obvious to add the slot shield to prevent paint from clogging the upper rim of the paint can and to include the slot shield with the topple resistant receptacle in a kit because the two items are related as paint can accessories that both enhance the effective use of the paint can.

The slot shield of Pool includes a disk having a top side, bottom side, central opening, exterior perimeter, a brush wiping edge or wiping bar 170, a gripping tab 160, and bottom side, concentric, first and second raised shoulders. The first shoulder having a ridge. Pool includes a wiping shield 167 with a raised shoulder.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Williams in view of Morrison and Pool as applied to claim 16 above, and further in view of Desjardins.

Pool discloses the wiping edge except for the further wiping edge extending angularly therefrom. Desjardins teaches tool support device 34 with a straight inside edge with a further wiping edge extending angularly therefrom at portion 50. It would have been obvious to add the further wiping edge to provide more thorough cleaning when the brush is wiped.

Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams in view of Morrison and Pool as applied to claim 1 above, and further in view of Kovathana.

Pool fails to disclose a brush securing means. Kovathana teaches rubber band 62 for securing a brush as shown in Fig. 2. It would have been obvious to add a brush securing means to tightly secure a brush to the shield in order to keep paint from splattering from a falling brush.

Claim 26 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen J. Castellano/  
Primary Examiner  
Art Unit 3727

sjc